IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 885 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRJI KHIMJI DAVDA

Versus

MUKESH RAVJIBHAI THAKKAR

Appearance:

1. Civil Revision Application No. 885 of 2002

MR SURESH M SHAH for Petitioner No. 1-4 with

MR MEHUL S SHAH for Petitioner No. 1-4

MR NV ANJARIA for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 20/06/2003

ORAL JUDGEMENT

1. Rule. With the consent of the learned advocates for the parites, this civil revision application is taken

up for final hearing. Hirji Khimji Davda and others have filed this Civil Revision Application challenging the judgment and order dated 21-6-2002 passed below the application exh. 5 in Civil Misc. Appeal No. 282 of 2001 by the learned Assistant Judge, Kutchh at Bhuj. Under Section 25 of the Guardians and Wards Act, the opponents Hirji Khimji Davda and others were directed to return the custody of the Wards Omkumar Mukeshbhai Thakkar aged 8 years and Meetkumar Mukeshbhai Thakkar 5 years on or before 04-7-2002. It was further ordered that the applicant shall allow the opponents to meet the Wards at his house once in a month.

2. When the matter was filed before this Court on 5-7-2002 this Court, Hon'ble Mr. Justice D.P. Buch passed the order on 19-7-2002 and also passed the order on 26-7-2002.

3. The facts giving rise to this civil revision application are as under :

The applicant got married with late Jayshreeben daughter of opponents no. 1 and 2 namely Hirji Khimji Davda and Shrimati Savitriben Hirjibhai Davda on 8-2-1993. During wed-lock with the applicant Jayshreeben has delivered two sons namely Omkumar and Meetkumar and they are at present aged about 8 years and 5 years respectively. It is also stated in the application that on 11-6-1999 while Jayshreeben was cooking, fire broke out from the stove and she was injured due to fire. The applicant has tried to extinguish the fire. Hence, the applicant has also sustained burns injuries. Jayshreeben was shifted to hospital for treatment and she was admitted in Burns Ward of G.K.General Hospital at Bhuj. The applicant, his brother and wife of his brother were also in the said hospital to look after Jayshreeben. At that time, on 11-6-1999, the opponents no. 1 and 2 have removed said two minor children of the applicant to their houses. Thereafter, on 13-6-1999 Jayshreeben succumbed to her injuries and hence her mother Savitriben Harjibhai has lodged F.I.R. against the applicant for the offences punishable u/s 498(A)-306-114 of the I.P. Code. Thereafter the applicant was arrested and subsequently he was released on bail.

4. On the facts and the grounds stated in the application, the applicants have filed the application before the District Court at Bhuj to recover custody of the aforesaid two minor wards from the opponents. In that application as indicated above, the learned Judge has passed the order and that order has been challenged

by the petitioners before this Court.

5. Rule. With the consent of the learned advocates for the parites, this civil revision application is taken up for final hearing. Heard leaned advocate Mr. Mehul S. Shah for the petitioners and Mr. N.V. Anjaria learned counsel for respondent.

6. Mr. Anjaria learned counsel for the respondent has produced the judgment and order dated 25-3-2003 passed by the learned Additional Sessions Judge, Fast Track Court, at Bhuj in Sessions Case No. 92 of 1999 whereby respondent herein i.e. Mukeshbhai Ravjibhai Thakkar and others have been acquitted from the charges of offences punishable u/s 498(A)-306-114 of the I.P. Code and the same is taken on record of this case.

7. It may also be noted here that this Court has also not decided this civil revision application on merits.

8. In view of the peculiar facts and circumstances of this case, when the question regarding custody of the minor children is concerned, I request the learned Assistant Judge, Kachchh at Bhuj to hear and adjudicate Civil Misc. Application No. 282 of 2001 finally after taking into consideration the entire evidence produced by both the parties in this behalf and decide the same in accordance with law, without being influenced by the interim orders passed by this Court in the present revision application, as early as possible preferably on or before 31-12-2003. Interim relief granted by the lower Court and continued by this Court is modified to the effect that respondent - Mukesh Ravjibhai Thakkar shall allow the applicants herein to meet the wards namely Omkumar and Meetkumar at his house twice in a month instead of once in a month. Rule is made absolute to the aforesaid extent, with no order as to costs.

(K.M. Mehta, J.)

/JVSatwara/